

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 389 Public School Employment
SPONSOR(S): Proctor and others
TIED BILLS: **IDEN./SIM. BILLS:**

DIRECTOR	REFERENCE	ACTION	ANALYST	STAFF
1)	PreK-12 Committee		Mizereck	Mizereck
2)	Education Appropriations Committee			
3)	Education Council			
4)				
5)				

SUMMARY ANALYSIS

NOTE: The content of this bill analysis was prepared by the Department of Management Services, Division of Retirement.

HB 389 would further liberalize reemployment exceptions to the 12-month reemployment limitation period following the effective retirement date of a Florida Retirement System (FRS) member. As proposed, HB 389 would allow a FRS retiree to be reemployed by a district school board or the Florida School for the Deaf and the Blind on an annual contractual basis as administrative personnel, as defined in s. 1012.01(3), F.S., during the second through twelfth month of retirement without having to suspend his or her retirement benefits. This bill would take effect upon becoming law.

Note: An actuarial special study is required to determine the fiscal impact of HB 389.¹ This bill does not provide the required funding to meet the actuarially sound funding requirements of Article X, Section 14 of the Florida Constitution and Part VII of Chapter 112. Also, this bill does not provide a statement of important state interest.

¹ A special study was performed by Milliman, Inc. Consulting Actuaries, dated April 19, 2005. The Department of Education was contacted for new salary data and indicated the number of potentially affected positions was 13,233, 27.7% greater than the 10,361 provided for the original study. The consulting actuary has indicated that a revised special study is required.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 3/27/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- The bill expands the Florida Retirement System benefit to Florida School for the Deaf and Blind and school district administrators who are rehired after 30 days.

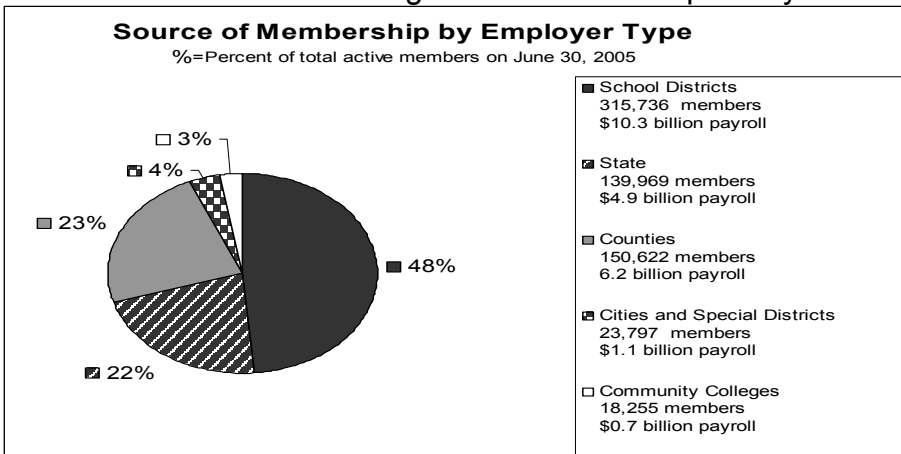
Ensure lower taxes-- The bill increases the Florida Retirement System contribution required by employers and the state.

Promote personal responsibility-- The bill expands Florida Retirement System benefits paid by the state and employers.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION:

Florida Retirement System.—The FRS currently consists of five membership classes — the Regular Class, Special Risk Class, Special Risk Administrative Support Class, Elected State Officers' Class, and Senior Management Service Class. The FRS Regular Class includes all members who are not eligible for membership in any of the other membership classes (about 90 percent of all FRS members). The vast majority of district school board and Florida School for the Deaf and the Blind personnel are in the Regular Class.



FRS membership.—Membership is compulsory for all full-time and part-time employees working in a regularly established position for any state agency, county government agency, district school board, state

university, community college, or participating city or special district. District school board employees make up nearly half of the total membership of the FRS (in all classes).

According to the Department of Education, as of 06/30/2005 there were 13,233 district school board administrators (4.2% of the overall school board membership) whose total salaries are \$714,419,747 (6.9% of the overall school board salaries). These figures reflect an increase of 27.7% and 0.93% respectively in the figures previously provided by the DOE which were used in the actuarial special study. DOE advises that the increase results from the inclusion of part-time administrative personnel in state fiscal-year end reports which were not reflected in the prior figures provided.

The Florida School for the Deaf and the Blind reports that as of 11/16/2005, they had 58 administrative personnel positions (7.7% of the overall Florida School for the Deaf and the Blind membership), whose total salaries were \$3,419,796 (15.0% of the overall Florida School for the Deaf and the Blind salaries).

FRS plan structure.—Under the FRS, members within the same membership class are generally subject to the same plan requirements and benefit structure. To provide for fairness and equity in funding, any proposal that substantially enhances benefits for a subgroup of a membership class, by its nature, requires the establishment of a special membership classification for that subgroup. An example is the Elected Officers' Class (EOC), which is currently subdivided into subclasses for the following membership groups:

- Judges
- Governor, Lt. Governor, Cabinet, Legislators, State Attorneys and Public Defenders
- Elected County Officers and certain other local elected officials

Contribution rates are separately calculated for these subclasses (for example, effective July 1, 2005, the total contribution rates for these three groups are 18.65%, 12.49%, and 15.23%, respectively).

Currently, all vested FRS members (other than Special Risk Class members) may retire with full benefits when they either attain age 62 or complete 30 years of service. Vested Special Risk Class members may retire with full benefits when they reach age 55 or complete 25 years of Special Risk Class service, regardless of age.

Reemployment Restrictions.—After retiring under the FRS, a retiree can work for any private employer, for any public employer not participating in the FRS, or for any employer in another state, without affecting his or her FRS benefits. However, subject to the exceptions described below, if a retiree is reemployed in his or her first year of retirement by a **FRS employer**, the following limitations apply during the **first calendar month of retirement**:

- A retiree who did not participate in DROP must terminate all employment (be off payroll with all FRS employers for 1 calendar month) to meet the definition of termination and complete retirement from the FRS. If a retiree returns to work for a participating employer during the first calendar month of retirement, the retiree will **void** his or her retirement and the retiree's FRS membership will be reestablished. All retirement benefits must be repaid and the member must reapply for retirement, establishing a later effective date of retirement.
- A retiree who participated in DROP must meet the termination requirement noted above for the calendar month following the end of his or her DROP participation. If reemployment occurs within this first calendar month, the retiree's DROP participation and retirement are void. Any funds received, including his or her DROP accumulation, must be repaid to the FRS. The member must reapply to establish an effective retirement date and may no longer be eligible to participate in DROP².

During the 2nd – 12th months following retirement, as noted above, an FRS retiree cannot earn a salary from any FRS-participating employer while drawing retirement benefits from the

² An exception applies in the case of DROP participants whose positions are covered by the Elected Officers' Class.

system. If a retiree works for a participating employer during this period, the retiree must inform the Division. Except as otherwise noted below, if a retiree works during this limitation period, the Division will suspend his or her benefits and the retiree must repay any such benefits inappropriately received. After the first 12 months of retirement, there are no further reemployment limitations.

Exceptions to reemployment limitations:

- An FRS retiree who is elected or appointed to an elective office is exempt from reemployment limitations.
- A retired justice or judge on temporary assignment to active judicial service pursuant to Article V of the State Constitution is exempt from reemployment limitations after being retired for 1 calendar month. Such justices or judges are not eligible for renewed membership.
- District School Boards.—An FRS or TRS retiree may be reemployed without limitation as a classroom teacher on an annual contractual basis or as a noncontractual substitute or hourly teacher without limitation. Additionally, noncontractual employment is allowed without further limitation for an FRS retiree only who is hired as an education paraprofessional, a transportation aide, a bus driver, or a food service worker.
- Florida School for the Deaf and the Blind.—An FRS or TRS retiree may be reemployed on an annual contractual basis as classroom teacher or as substitute or hourly teacher on a noncontractual basis, without limitation. (A substitute residential instructor and a substitute nurse are included in the category of noncontractual substitute or hourly teacher.)
- Charter Schools.—An FRS or TRS retiree may be reemployed as classroom teacher on an annual contractual basis or as substitute or hourly teacher on a noncontractual basis, without limitation.
- Developmental Research Schools (University Lab Schools).—An FRS or TRS retiree may be reemployed on an annual contractual basis as classroom teacher or as a substitute or hourly teacher on a noncontractual basis, without limitation.
- Community Colleges.—An FRS or TRS retiree may be reemployed as part-time, noncontractual adjunct instructor or an FRS retiree may be employed as a phased retirement program participant for up to 780 hours.
- Universities.—An FRS or TRS retiree may be reemployed as an adjunct faculty member or a phased retirement program participant with the State University System for up to 780 hours.
- Firefighters or paramedics.—An FRS retiree may be reemployed as a firefighter or paramedic serving in temporary or regularly established positions for up to 780 hours.

A member who retires on disability cannot work in gainful employment and continue to receive disability benefits.

Renewed Membership.—FRS retirees and retirees of other state-administered retirement programs who are reemployed in FRS-covered employment will renew their membership in the FRS and earn service credit toward a “second-career” retirement benefit for which they will qualify upon vesting again. Renewed members may elect to participate in either the FRS Investment Plan or FRS Pension Plan.

Renewed members who retire and receive a second-career retirement benefit, including former DROP participants, must meet the definition of termination and are once more subject to reemployment limitations, unless they are eligible for exceptions, as previously described. With rare exception, retirees who participate in DROP are eligible for renewed membership only after they have terminated employment upon completing their period of program participation.

Renewed members are ineligible to participate in DROP, ineligible for the Special Risk Class membership and are not eligible for disability benefits. However, the surviving spouse and/or dependent children of a renewed member may qualify for survivor benefits.

Local Government Mandates Provision.—Article VII, Section 18, of the Florida Constitution effectively invalidates any law that would require counties or municipalities to spend funds or limit their ability to raise revenue or receive state tax revenue, unless certain conditions are met. First, the Legislature must have determined that the law fulfills an important state interest. The law must also meet one or more additional criteria, including that the “expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.”

Article X, Section 14, of the Florida Constitution.—Since 1976, the Florida Constitution has required that benefit improvements under public pension plans in the State of Florida must be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Part VII of chapter 112, F.S.—Article X, Section 14, of the Florida Constitution is implemented by statute under part VII of chapter 112, F.S., the “Florida Protection of Public Employee Retirement Benefits Act,” which establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The key provision of this act states the legislative intent to “... prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.”

EFFECT OF THE BILL:

HB 389 would allow FRS retirees to be reemployed on a contractual basis by district school boards or the Florida School for the Deaf and the Blind as administrative personnel as defined in s. 1012.01(3), F.S. The retiree must be off all FRS-covered employment for one calendar month following retirement or DROP participation to finalize termination and his/her first-career

retirement in addition to being eligible for enrollment as a renewed member. The definition of administrative personnel in s. 1012.01(3) is:

1012.01 Definitions.--Specific definitions shall be as follows, and wherever such defined words or terms are used in the Florida K-20 Education Code, they shall be used as follows:

(3) ADMINISTRATIVE PERSONNEL.--"Administrative personnel" includes personnel who perform management activities such as developing broad policies for the school district and executing those policies through the direction of personnel at all levels within the district. Administrative personnel are generally high-level, responsible personnel who have been assigned the responsibilities of system wide or school wide functions, such as district school superintendents, assistant superintendents, deputy superintendents, school principals, assistant principals, career center directors, and others who perform management activities. Broad classifications of administrative personnel are as follows:

(a) District-based instructional administrators.--Included in this classification are persons with district-level administrative or policymaking duties who have broad authority for management policies and general school district operations related to the instructional program. Such personnel often report directly to the district school superintendent and supervise other administrative employees. This classification includes assistant, associate, or deputy superintendents and directors of major instructional areas, such as curriculum, federal programs such as Title I, specialized instructional program areas such as exceptional student education, career education, and similar areas.

(b) District-based noninstructional administrators.--Included in this classification are persons with district-level administrative or policymaking duties who have broad authority for management policies and general school district operations related to the noninstructional program. Such personnel often report directly to the district school superintendent and supervise other administrative employees. This classification includes assistant, associate, or deputy superintendents and directors of major noninstructional areas, such as personnel, construction, facilities, transportation, data processing, and finance.

(c) School administrators.--Included in this classification are:

1. School principals or school directors who are staff members performing the assigned activities as the administrative head of a school and to whom have been delegated responsibility for the coordination and administrative direction of the instructional and noninstructional activities of the school. This classification also includes career center directors.

2. Assistant principals who are staff members assisting the administrative head of the school. This classification also includes assistant principals for curriculum and administration.

If enacted, this reemployment provision would not be limited to school-based administrators, but would apply to all administrative personnel employed by district school boards and the Florida School for the Deaf and the Blind (see above), ranging from district-based administrators including school superintendents to school-based administrators including assistant principals.

The change proposed by HB 389 would expand the current exceptions to reemployment restrictions during the first 12 calendar months of retirement or following DROP participation by allowing district school boards to reemploy retired FRS members as administrative personnel on an annual contractual basis who have been retired for 1 calendar month. The reference to "annual contractual basis" has a more of a relationship to the employment of instructional

personnel than administrative personnel covered by this bill. The potential impacts of this bill include:

- Encouraging “paper” terminations since retirees could return to contractual employment in these positions within the first 12 months of retirement without penalty. This could foster a willingness for members to retire earlier and to become reemployed to earn a second-career benefit while drawing their first career retirement benefit and earning a salary. This could result in a greater number of Florida Retirement System members deciding to retire sooner than they might have otherwise, thereby drawing their retirement benefits for a longer period of time based upon a shorter working career and investment period, which would increase the cost to the retirement system. This impact resulted in an employer contribution rate increase as recommended by the 2005 Special Study to meet the concurrent and actuarially sound funding requirement of Part VII, Chapter 112, F.S., and Article X, Section 14 of the Florida Constitution. Based upon data provided by the Department of Education, there are significantly more eligible administrator positions than were identified for the 2005 Special Study. The consulting actuary has indicated a revised study is required.
- The reemployment provision of this bill applies only to administrative personnel employed by district school boards and the Florida School for the Deaf and the Blind. Administrative personnel employed by other educational institutions that provide K-12 educations such as charter schools and developmental research schools would be excluded and these employers may seek similar treatment for their administrative personnel positions.
- As the reemployment limitations become more liberalized and only certain employee groups benefit from them, there will be increasing pressure to expand or remove all reemployment limitations. Other employer groups will seek reemployment exemptions so they may hire qualified experience retirees without affecting the retirees’ benefits during their first year of retirement. Excluded retirees will seek to be able to enjoy the same benefits as those retirees that are exempted from reemployment restrictions. If passage of this proposal results in other liberalizations of the reemployment restrictions, it will lead to increased cost for the Florida Retirement System because their retirement benefits will be funded over a shorter working career but will be paid for a longer period of time.
- This administrator employee group or the district school boards and the Florida School for the Deaf and the Blind that employ them do not represent a separate subclass of the Regular Class. Therefore all employers with Regular Class employees would pay the higher retirement contribution costs that would result from these proposed liberalized employment exceptions, not just the school boards or the Florida School for the Deaf and the Blind that would benefit from this proposal.

Additional Issues for consideration:

HB 389 does not meet the concurrent funding in an actuarially sound manner as required by Article X, Section 14 of the Florida Constitution and Part VII, Chapter 112, F.S. Milliman, Inc., consulting actuary prepared a special study of the benefit improvement dated April 19, 2005. The results of this study indicated that the Regular Class rate must be increased by 0.02% to fund the fiscal impact of this benefit improvement for just the school boards as proposed by HB 389. This study did not include the benefit improvement for the Board of Trustees of the Florida School for the Deaf and the Blind as proposed by HB 389. The 58 affected positions of the School for the

Deaf and the Blind do not significantly impact this study. However, the DOE has indicated that the number of affected positions is 27.7% higher than provided for the original study and the consulting actuary has indicated a revised special study is required due to this change.

To meet these actuarial funding requirements, it is recommended that this bill should be amended to reflect this rate increase for the Regular Class when determined by the revised special study; to specify that this rate increase is in addition to the rates established by s. 121.71, F.S., effective July 1, 2006; and the effective date of this bill become July 1, 2006, to be concurrent when the funding would be provided.

C. SECTION DIRECTORY:

Section 1. Amends s.121.091, F.S.; creating a reemployment exception for FRS retirees reemployed by district school boards or the Board of Trustees for the Florida School for the Deaf and the Blind as administrative personnel, as defined in s.1012.01(3), F.S.

Section 2. Provides an effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

An actuarial special study (2005 j) was conducted in 2005 based upon data from the 2004 FRS Valuation and information provided by the Department of Education (DOE) on January 26,

2005. This study indicated that the overall contribution rate for all employers with Regular Class members would have to be increased by 0.02% in order to fund the reemployment exceptions for just the school boards. The estimated expenditure impact based on this study for local governments and the state for fiscal year 2006/07 was \$3,144,000 and \$756,000 respectively. Although the impact of the addition of the 58 Florida School for the Deaf and the Blind Administrative personnel as proposed by HB 389 was not included in this study, the impact of this change by itself would be minimal.

However, as the updated information provided by the DOE as of June 30, 2005 substantially changes the numbers provided for the study, a revised actuarial study is required. The updated figures from DOE changed the number of impacted personnel from 10,361 to 13,233 and changed the total salaries of impacted personnel from \$707,829,989 to \$714,419,747. Limiting the cost increase to just school boards and the Florida School for the Deaf and the Blind would require creating a subclass(es) for the affected employers or employees within the Regular Class and would also require a revised special study because this was not addressed by the 2005 actuarial special study.

ACTUARIAL STATEMENT OF FISCAL SOUNDNESS:

- a. This bill does not comply with the requirements of Article X, Section 14 of the Constitution.
- b. This bill does not comply with the provisions of Chapter 112, Part VII, Florida Statutes.
- c. Explanation:

HB 389 proposes to allow FRS retirees to be reemployed as administrative personnel on an annual contractual basis without limitation by district school boards and the School for the Deaf and the Blind after meeting the definition of termination. Expansion of reemployment exceptions to include these employees could encourage "paper" terminations which would result in FRS members retiring sooner than they would have otherwise, drawing retirement benefits for a longer period of time based upon a shorter working career. The changes proposed by this bill would increase the costs of the FRS as well as further establish the precedent for other employee groups and employers to seek similar exceptions to reemployment limitations.

- d. Fiscal Note:

In its current form, this bill does not provide the funding to meet the statutory and constitutional requirements for concurrent funding on an actuarially sound basis of the benefit improvements proposed by this bill. A revised actuarial special study is required to determine the cost due to additional information provided by the DOE.

The liberalization of reemployment exceptions continues a growing trend that creates an incentive for members to retire earlier than they otherwise would retire, encouraging a behavior change that is contrary to the current funding assumptions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill also does not contain a declaration of important state interest that is necessary to comply with the constitutional prohibition of unfunded local mandates (see article VII, Section 18, Florida Constitution, on page 7).

2. Other:

This bill requires a revised actuarial study in order to comply with the requirements of Article X, Section 14 of the Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The proposed amendments to s.121.091(9)(b)3, F.S., expanding reemployment exceptions for *school boards* does not include a reference to the administrative personnel with those positions for which retirement contributions are required upon reemployment. It is suggested that line 74-76 of page 3 of this bill be amended to read:

74 transportation assistants, bus drivers, ~~or~~ food service workers
75 or administrative personnel are subject to the retirement contribution required by
76 subparagraph 7.

Alternatively, rather than listing all of these positions the last sentence of s. 121.091(9)(b)3., F.S., could be struck and replaced with:

“District school boards reemploying retirees in positions specified in this sub-subparagraph are subject to the retirement contribution required by subparagraph 7.”

The proposed amendments to s.121.091(9)(b)6, F.S., expanding reemployment exceptions for the *Board of Trustees for the Florida School for the Deaf and the Blind* does not include a reference to the administrative personnel with those positions for which retirement contributions are required upon reemployment. It is suggested that line 156-157 of page 6 of this bill be amended to read:

156 teachers, residential instructors, ~~or~~ nurses, or administrative personnel is subject to
157 the retirement contribution required by subparagraph 7. Reemployment

Alternatively, rather than listing all of these positions the sentence containing such listing in s. 121.091(9)(b)6., F.S., could be struck and replaced with:

“The Board of Trustees of the Florida School for the Deaf and the Blind reemploying retirees in positions specified in this sub-subparagraph are subject to the retirement contribution required by subparagraph 7.”

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES